



Docket No.: KCC-16,221

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellants: Lori Tassone HOLMES, et al.

Serial No.: 09/939,535

Filing Date: 24 August 2001

Title: THIN, HIGH CAPACITY MULTI-
LAYER ABSORBENT CORE

Customer No. 35844

Confirmation No. 2474

Group No.: 3761

Examiner: J. Stephens

REPLY BRIEF UNDER 37 CFR 41.41

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

Appellants respectfully submit this Reply Brief in response to the Examiner's Answer mailed 23 August 2007, to supplement the remarks made in the Appeal Brief.

I hereby certify that this correspondence (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

28 September 2007

28 Sept 2007
Date

[Signature]
Signature

The Examiner's Answer indicates Claims 26, 57, 58, 60-63, 65, and 68 are allowed, and thus this Reply Brief responds to the remaining rejection of Claims 43, 65, 69-70, and 72-77 under 35 U.S.C. 103(a) as being unpatentable over *Everett* in view of *Osborn*.

Appellants still assert that the alleged combination of the two continuous layer core of *Everett* and the single discontinuous layer of *Osborne* (for the purpose of providing independent, unconstrained movement by each segment in the Z-direction without constraints imposed by adjacent segments) does not provide Appellants' claimed invention of a single continuous length upper layer and a lower layer of a plurality of separate pieces adjacent the continuous length of the upper layer. A combination of these references, motivated to modify the *Everett* absorbent structure based on the benefits taught in *Osborn* would result in a discontinuous absorbent structure in which *both layers of Everett are discontinuous*. There is no suggestion or motivation in either of the references, alone or in combination, to produce an absorbent structure in which one layer is discontinuous and the other layer is not, particularly as the continuous layer may certainly inhibit the movement of each lower layer segment in the Z-direction.

The Examiner's Answer, at page 8, responds to arguments of the Appeal Brief by stating:

However, what is claimed in claim 43 is that the upper layer includes a single continuous length and the lower layer comprises a plurality of separate pieces. Even with a plurality of separate pieces, each piece has a single continuous length.

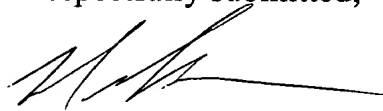
The above statement does not accurately reflect the language of Claim 43. Claim 43 specifically recites that "the lower layer comprises a plurality of separate pieces placed in desired locations adjacent to the continuous length of the upper layer of the absorbent assembly." The Examiner's Answer is thus not accurate in merely stating that "the lower layer comprises a plurality of

separate pieces.” The lower layer’s “plurality of separate pieces” is adjacent to the recited single continuous length of the upper layer. When the language is correctly considered, the language supports Appellants’ position that the upper layer is continuous and the adjacent lower layer is discontinuous.

Appellants have argued that all claim terms need to be considered, and that the term “continuous” is not superfluous. The Examiner’s Answer, at pages 8 and 9, counters that “[t]he claim language does not require the layer to be continuous throughout the length of the layer.” However, the language of Claim 43 requires that the lower layer’s plurality of pieces is adjacent to the continuous length of the upper layer. Therefore, there is no suggestion or motivation in the combined references to produce an absorbent structure in which a discontinuous layer is below and adjacent a length of a layer that is not, as the continuous length may certainly inhibit the movement of each adjacent lower layer segment in the Z-direction.

For the reasons stated in the Appeal Brief, and supplemented above, Appellants respectfully submit that the rejections posed by the Examiner are improper as a matter of law and fact. Accordingly, Appellants respectfully request the Board to reverse the rejection of Claims 43, 65, 69-70, and 72-77.

Respectfully submitted,



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